IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/04/2004

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ
AND
THE HONOURABLE MRS. JUSTICE R.BANUMATHI

Criminal Appeal No.14 of 1997

Chandrasekar .....Appellant/Accused

-Vs-

State by Inspector of Police,
J.1,Saidapet Police Station,
Madras. .....Respondent

Criminal Appeal, under Section 374 of Crl.P.C. against the Judgment of the Principal Sessions Judge, Madras dated 09.12.1996 made in S. C.No.348 of 1996, as stated therein.

!For Appellant :: Mr. T.Sudanthiram

^For Respondent :: Mr. E.Raja
Additional Public Prosecutor

:J U D G M E N T

(Judgment of the Court was made by R. BANUMATHI, J.)

The Appellant is the Accused in S.C.No.348/1996 on the file of Principal Sessions Judge, Chennai. By the Judgment dated 09.12.1996, the Principal Sessions Judge, Chennai has convicted the Appellant/Accused under Sec.302 I.P.C and sentenced him to suffer Imprisonment for Life.

2. Briefly stated the prosecution case is:
The deceased-Parvathy is the wife of P.W.1-Ravi. They were living in G-25-Pakkam Village. P.W.1 and his wife-Parvathy were doing centring work. P.W.1 had already borrowed Rs.200/- from the Accused, which he had not repaid. Including the interest totally P.W.1 has to repay Rs.600/-. Since P.W.1 had not repaid the amount, in lieu of the amount payable, the Accused had taken away the Cycle of P.W.1. P.W.1 had learnt about the same from his wife-deceased-Parvathy.

3. On the night of 13.05.1995, at about 08.00□09.00 p.m., P.W.1Ravi, P.W.2-Sivanandam, P.W.3-Govindammal(Mother-in-law of P.W.1-Ravi) and deceased-Parvathy went to the house of the Accused-G-13 to ask about the

Cycle. The Accused had asked Parvathy to pay the amount and humiliated her saying if the amount is not paid, to share the bed with him. Then the Accused inflicted deep cut injury on the Left Cheek of the deceased-Parvathy, which caused cut injury from middle of Left External Ear and Left Occipital Region of Scalp. After the injury was inflicted, Parvathy started running. The accused chased her. The occurrence was witnessed by P.W.2-Sivanandam-Accounts Assistant, P.W.3 -Govindammal (Mother-in-law of P.W.1-Ravi), who accompanied P.W.1. P.W.4-Kavimuthu while talking with one Murugan, saw the deceasedParvathy running. The injured-Parvathy had fallen in front of the Tea Shop of P.W.5-Saisu. The Accused was asked about his conduct by P.W.1 and others.

4. P.W.1 had taken the injured-Parvathy to Saidapet Police Station and then to Royapettah Government Hospital. On the same day, at about 09.20 p.m., Ex.P.1-Statement from P.W.1 was recorded. On the basis of Ex.P.1-Complaint, law was set in motion by registering F.I.R in Crime No.825/95 under Sec.307 I.P.C by P.W.13-Sub-Inspector of Police.

5. P.W.14-Inspector of Police had taken up the investigation. On 13.05.1995, at about 10.15 p.m., scene of occurrence was inspected in the presence of witnesses. Ex.P.2-Observation Mahazar and Ex.P.16Rough Plan were prepared on the scene of occurrence. M.O.4-Blood Stained Tarred Mud and M.O.5-Sample Tarred Mud were seized. From injuredParvathy, M.Os.6 and 7 - Blood Stained Clothes were seized.

6. Parvathy succumbed to the injuries on the early morning of 14.05.1995. On receipt of death intimation, P.W.14-I.O had altered the case into Sec.302 I.P.C under Ex.P.17-Express Report. Inquest was held on the body of the deceased-Parvathy. Ex.P.18 is the Inquest Report. After the Inquest, the body was sent to Autopsy.

7. Pursuant to the requisition from P.W.14-I.O., P.W.12-Dr. Krishnan had conducted the Autopsy. He has noted the cut injuries on the Facial Bone extending from Left External Ear to left Occipital Region of Scalp, cutting the Left Maxillary Bone and other corresponding injuries. Opining that the death was due to Shock and Haemorrhage due to cut injury to the Head and Face, P.W.12-Dr.Krishnan had issued Ex.P.1 3-Post Mortem Certificate.

8. On the same day, at about 04.30 p.m., the Accused was arrested. When being questioned, the Accused had voluntarily confessed his guilt. Ex.P.4 is the admissible portion of the Confession Statement. On the basis of his Confession Statement, M.0.1-Kathi was seized under Ex.P.5-Seizure Mahazar. On completion of Investigation on 07.07.1995, the Accused was charge sheeted for the offence punishable under Sec.3 02 I.P.C.

9. To substantiate the Charges, in the Trial Court, P.Ws.1 to 14 were examined. Exs.P.1 to 18 were marked. M.Os.1 to 7 were remanded to the Court

by the prosecution. The Accused was questioned under Sec.31 3 Crl.P.C about the incriminating circumstances and evidence. The Accused denied all of them and stated that a false case is foisted against him.

10. Upon consideration of the evidence, the Trial Court accepted the evidence of P.Ws.1 to 5, finding that there is no reason to discard the testimony of P.Ws.1 to 5. In its view, identification of the Accused by P.Ws.1 to 5 in the burning street light was credible and acceptable. The Trial Court rejected the point urged by the defence on the non-examination of independent witnesses. From the deadly weapon used and nature of injury caused, the Trial Court inferred the intention of the Accused to commit the murder of deceased-Parvathy and on those reasonings, found the Accused guilty under Sec.302 I.P.C.

11. Aggrieved over the conviction, the Appellant/ Accused has preferred this Appeal. Contending that the prosecution has not come forward with the true version, learned counsel for the Appellant/Accused submitted that the Trial Court ought to have found that P.W.1 and others were the aggressors as they went to the house of the Accused gathering men, which was not taken note of by the Trial Court. Contending that the non-seizure of Cycle and non-examination of independent witnesses seriously undermines the prosecution case, learned counsel further submitted that the Trial Court ought to have given the benefit of doubt to the Accused. Drawing the attention of the Court to the single blow inflicted on the face, learned counsel for the Appellant/ Accused relied upon the decisions of the Supreme Court in
(i) 1998 S.C.C. (CRI) 1045; and
(ii)2000 S.C.C. (CRI) 96
and submitted that in any event, the offence would fall only under Sec.304(II) I.P.C and the conviction under Sec.302 I.P.C. cannot be sustained.

12. Countering the arguments of the Appellant/Accused and drawing the attention of the Court to the deep cut injury on the Facial Bone and Occipital Region of Scalp and the size of M.O.1-Kathi, learned Additional Public Prosecutor submitted that the intention to commit the murder is clearly discernible from the same and the Trial Court rightly convicted the Appellant/Accused under Sec.302 I.P.C. It is submitted that the assessment of evidence and the reasonings for conviction are well balanced and that there is no reason warranting interference in the verdict of conviction nor alteration of conviction into Sec.3 04 (II) I.P.C.
13. We have carefully analysed the evidence and materials on record and the Judgment of the Trial Court and the submissions of both sides. In our considered view, the main points that arise for consideration are whether the conviction under Sec.302 I.P.C is sustainable and whether the conviction is to be altered into under Sec.304 PART II I.P.C.
14. Almost the facts leading to the occurrence are not disputed. Admittedly, P.W.1 had borrowed Rs.200/- from the accused, which he had not repaid to him. Borrowed amount with added interest totalled to Rs.600/-. Since P.W.1 had not repaid the amount, in lieu of payment of amount, the accused had taken away the Cycle of P.W.1, which P.W.1 learnt from his wife-Parvathy. To ask about the Cycle, on the night of 13.05.1995 between

08.00-09.00 p.m., P.W.1-Ravi, P.W.2-Sivanandam, P.W.3-Govindammal (Mother-in-law of P.W.1) and Parvathy went to the house of the Accused (G-13) and asked him about the Cycle. A wordy quarrel arose and the Accused humiliated the deceased-Parvathy saying that if the amount is not paid, to share the bed with him. During the course of wordy quarrel, the Accused inflicted cut injury on the Left Cheek of Parvathy. Parvathy started running and the Accused had also chased her. Parvathy had fallen down in front of the Tea Shop of P.W.5. P.W.1- Husband of the deceased-Parvathy, and P.W.2-SivanandamAccounts Assistant, P.W.3-Govindammal (Mother-in-law of P.W.1), who accompanied P.W.1 have consistently spoken about the occurrence. Their evidence as to the narration of the occurrence is cogent and consistent.

15. Evidence of P.Ws.1 to 3 is further strengthened by the version of P.W.4-Kavimuthu, who saw the deceased-Parvathy running by closing her ears with her hands. P.W.5-Tea Shop Owner had spoken about the fact that the deceased-Parvathy had fallen in front of his Tea Shop, which is shown in Ex.P.16-Rough Plan.

16. Having carefully gone through the evidence of eye witnesses-P. Ws.1 to 3 and the other witnesses-P.Ws.4 and 5, we find that their evidence remains unshaken. Even after lengthy cross-examination, the defence could not successfully bring out anything to create a doubt on the credibility of the evidence of P.Ws.1 to 3.

17. The occurrence was on 13.05.1995 at about 09.00 p.m., The occurrence was in Kothavalchavadi street. From Ex.P.16-Rough Plan and Ex.P.2-Observation Mahazar, it is seen that there was burning light in the street. There was sufficient light for the eye witnesses to identify the Accused. The Accused being already known to P.Ws.1 to 3, their identification of the Accused is infallible.

18. The case of the prosecution is strengthened by the objective finding during Investigation. Splattering of Blood in the Tar mud, recovery of M.O.1-Kathi at the instance of the Accused are strong pieces of evidence against the Accused, fortifying the prosecution case. M.O.4-Blood Stained Tarred Mud was seized from the place of occurrence. During Chemical Analysis, no blood was de tected since the same was disintegrated as seen from Ex.P.11-Chemical Report. Non-detection of human blood in M.O.4 would not in any way undermine the prosecution case.

19. Learned counsel for the Appellant/Accused contended that P.W.1 gathering men (P.Ws.2, 3 and his wife) going to the house of the Accused clearly shows that P.W.1 is the aggressor and the same was not properly appreciated by the Trial Court. It is further submitted that no proper investigation was done on this aspect and that there is suppression of origin of the occurrence. In our view, this contention does not merit acceptance. On the night of 13.05.1995, P.Ws.1 to 3 and deceased-Parvathy went to the house of the Accused to ask about the Cycle. P.W.1 doing centring work Cycle must have been of imminent necessity for his day today routine. As we have noted earlier, G-25 is the house of P.W.1 and the deceased-Parvathy. In the same Block, house of the Accused is in G-13. In a casual manner, P.W.1

accompanied by his wife-Parvathy, P.W.2-Sivanandham and P.W.3-Mother-in-law went to the house of the Accused to ask for return of the Cycle. Prosecution witnesses were unarmed. No intention of aggression could be attributed towards the prosecution witnesses.

20. P.Ws.1 and 3 are the Husband and Mother of deceased-Parvathy. P.W.2 is also closely known to them. The conviction is sought to be assailed contending that P.Ws.1 to 3 are interested witnesses. There is no provision that related witnesses are unreliable witnesses. P. Ws. 2 and 3 have clearly explained their presence saying that they have accompanied P.W.1-Ravi and deceased-Parvathy. The Trial Court, which had the opportunity of seeing and observing these witnesses in the witness box, found their evidence credible and trustworthy. We find no reason to take a different view. Upon cumulative evaluation of evidence of P.Ws.1 to 3 and other proved circumstances, we find that the prosecution had satisfactorily established that the Accused has caused the fatal injury to the deceased-Parvathy.

21. Nature of offence: The Trial Court found the Accused guilty under Sec.302 I.P.C. The Trial Court also found that the Accused had the necessary intention to kill the deceased mainly on two aspects --- (i) deep cut injury caused on the Face, cutting the Facial Bones and the Skull Bones; (ii)the nature of deadly weapon used - M.O.1 - Kathi wielded by the Accused. The main point arising for consideration is whether the Trial Court was not right in finding that the Accused had the intention to commit the murder of Parvathy.

22. From Ex.P.13-Post Mortem Certificate, we find the following injuries were caused to the deceased Parvathy.
(1) Abrasions on outer aspect of Right Shoulder..... on front of Right Knee ..... and Back of Right Elbow.....
(2) An oblique sutured wound on the Left Cheek, middle of Left External Ear and Left Occipital Region of Scalp 24.5 Cms in length. The front end is situated 6 Cms from the Left Angle of the Mouth.
(3) The middle of Left External Ear is found cut throughout its thickness.
(4) Cut fracture of Left Maxillary Bone, upper end of Left Mandible Bone, lower part of Zygomatic Bone, Left Ear Bone, Left Sterno Mastoid Bone and Left Occipital Bone throughout their thickness.
(5) Left Duramater is found cut, sub dural and sub-arachnoid haemorrhage on the Left Cerebral Hemisphere.
(6) Maxillary, Facial and Occipital Blood vessel are found cut.
The Accused caused the above deep cut injury on the Face of the deceased-Parvathy with M.O.1-Kathi measuring 1 ft 3" ; breadth 2". The conduct of the Accused using a deadly sharp cutting instrument and that he caused deep cut injury on the face of the deceased are to be taken note of.

23. Whether the Accused had the necessary intention to cause the death of Parvathy depends upon the facts and surrounding circumstances. The nature of the weapon used, the intention expressed by the Accused at the time of the act, the motive for commission of the offence, the nature and the size of the injuries, the parts of the body of the victim selected for causing the

injuries and the severity of the blow or blows are important factors that may be taken into consideration in coming to a finding. From the evidence adduced by the prosecution, it is seen that P.W.1 accompanied by his wife-Parvathy, P.W.2Sivanandham and P.W.3-Mother-in-law went to the house of the Accused to ask for return of the Cycle. The Accused stated either to repay the amount or asked Parvathy to share the bed with him. Obviously utterance of such words must have provoked P.W.1. Though it is not brought on evidence, we could perceive that there must have been exchange of words. During the wordy altercation and in spur of the moment, the Accused caused one cut injury on the Face of the deceased which of course, is a deep cut injury. There was no pre-meditation or pre-plan. Only in the course of sudden quarrel, the Accused caused the fatal injury. Though the Accused chased the deceased to some distance till the Tea Shop of P.W.5, the Accused did not inflict a second blow. In that facts and circumstances of the case, we are of the view that the conviction must be altered one from under Sec.302 I.P.C into one under Section 304 PART II I.P.C.

24. In support of his contention that when the second blow is inflicted in the heat of passion, the offence would not fall under Sec.302 I.P.C, but would fall only under Sec.304 PART II I.P.C., learned counsel for the Appellant/Accused relied upon the following decisions:
(i) RAM PRAKASH SINGH ..VS.. STATE OF BIHAR (1998 S.C.C. (CRI) 1045)

(ii)KALINDER BHARIK ..VS.. STATE OF HIMACHEL PRADESH (2000 S.C.C. (CRI) 96)

The first decision is a case of "One Knife Blow". Pointing out that the Appellant/Accused had not tried to give a second blow, the Supreme Court altered the conviction under Sec. 304 PART II I.P.C. In the second case where deceased Saroj sustained number of injuries, the Supreme Court altered the conviction under Sec.302 to Sec.304 PART II I. P.C. In the instant case also death is due to single blow Head Injury causing fracture of Facial Bones. Considering the fact that the injury was inflicted in a heat of anger, the conviction is to be altered into Sec.304 PART II I.P.C.

25. We are left with the only question of sentence. What is the proper sentence is to be determined considering the nature of the weapon used and the injury inflicted. The accused wielded a deadly weapon like M.O.1-Kathi, measuring 1 ft 3" with breadth 2". The blow was a violent blow on the vital organ of the body-Face involving the Skull. Considering the nature of weapon and the injury caused and other circumstances, we find that conversion of sentence of Imprisonment for Five years would meet the ends of justice.

26. We therefore partly allow this appeal. The conviction of the Appellant/Accused in S.C.No.348/96 by the Principal Sessions Judge, Chennai by the Judgment dated 09.12.1996 under Sec.302 I.P.C is altered into Sec.304 PART II I.P.C. For the conviction under Sec.304 PART II I.P.C. the Appellant/Accused is sentenced to undergo Rigorous Imprisonment for Five years.

27. The Trial Court is directed to take immediate steps for securing the Appellant/Accused to commit him to prison for serving the remaining period of sentence.

Index:Yes
Internet:Yes

Dpn/-

Copy to:
1. The Principal Sessions Judge,
Chennai.

2. The Superintendent,
Central Prison,
Chennai.

3. The Inspector of Police,
J-1, Saidapet Police Station,
Chennai District.

4. The Public Prosecutor,
High Court, Madras.